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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-560

DR. ROBERT B. BURNS,

Petitioner,

vs.

DR. ROBERT D. DECKER, President, Bemidji State University; DR. G. THEODORE MITAU, Chancellor, Minnesota State University System; DR. FRANK G. CHESLEY, President, Minnesota State University Board,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

RESPONDENTS' BRIEF IN OPPOSITION

Of Counsel:
CHARLES T. MOTTL
Special Assistant
Attorney General

WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD G. MARK
Assistant Solicitor
General
160 State Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2961
Attorneys for Respondents

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

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CITATION TO OPINION BELOW

The July 17, 1975, opinion of the Eighth Circuit Court of Appeals is not reported. The text of the opinion is set forth in the Appendix to Petitioner's Brief at a1.

QUESTION PRESENTED

Does the doctrine of res judicata bar an action in the federal courts where the petitioner's cause of action presented to the federal courts is substantially identical to a cause of action presented by the petitioner to and decided by the state courts?

STATEMENT OF CASE

Respondent State College Board (now designated as the State University Board) first employed Petitioner Burns on a nontenured basis in the summer of 1967 and subsequently as an assistant professor of Education at Bemidji State College (now designated as Bemidji State University). On December 6, 1968, petitioner received notice that his contract would not be renewed for the ensuing school year. Subsequently, on March 21, 1969, Respondent Dr. Robert D. Decker, President of Bemidji State College, notified petitioner that he would be terminated for alleged cause as of March 24, 1969 which was prior to the close of the 1968-1969 school year. Thereafter, petitioner requested a hearing before the State College Board with respect to the termination for cause.

On December 23, 1970, petitioner and respondents entered into a settlement agreement which reads in part:

> In consideration of the promises made in this agreement, the College and Board hereby withdraw the dismissal for cause proceedings by which Burns' employment was terminated in the spring of 1969, and Burns hereby withdraws his appeals and demands which resulted from that dismissal for cause.[1]

[1] The full text of the settlement agreement of the parties is set out in Petitioner's Appendix at e1-e4.

Pursuant to the settlement agreement, respondents tendered the sum of $1800 in full payment of petitioner's salary for the remainder of the 1968-1969 school year.

Subsequent to the mutual execution of the settlement agreement, petitioner commenced an action against respondents in Beltrami County District Court, Ninth Judicial District, State of Minnesota, wherein he alleged, among other causes of action, a claim for damages pursuant to the Federal Civil Rights Act, 42 U.S.C. § 1983 (1974), and further, that the aforementioned settlement agreement resulted from fraud and misrepresentation on the part of the respondents. The State district court granted respondents' motion for summary judgment finding that petitioner's alleged cause of action under 42 U.S.C. 1983 (1974) was without merit and that Burns settled any and all claims he might have had against respondents by entering into the settlement agreement and by the respondents having tendered to him the agreed sum of $1800. *Burns v. Decker*, Civil No. 23281 (Minn. D. Ct., 9th D., entered Nov. 30, 1972); set out in Petitioner's Appendix at d1.

Petitioner appealed to the Minnesota Supreme Court which affirmed the State district court's judgment. The Court stated:

> [W]e must find the settlement agreement conclusive evidence that the alleged wrong has been satisfied. We therefor have an obligation to prohibit any further action by plaintiff [Burns].
>
> Plaintiff further claims that even though he did execute the agreement, he subsequently became aware of the alleged misrepresentations of defendants. To allow this contention would be to frustrate the very purpose for which these agreements are executed . . . .

> Since we are here dealing with well-educated individuals, and the deposition indicates [plaintiff's] complete comprehension, plaintiff is precluded from now claiming misrepresentation and misunderstanding.

Burns v. Decker, 298 Minn. 7, 11-12, 212 N.W.2d 886, 889-890 (1973).

Petitioner then petitioned this Court for a writ of certiorari to the Minnesota Supreme Court. The petition was denied. *Burns v. Decker*, 416 U.S. 991, reh. den., 417 U.S. 978 (1974).

Failing to obtain the writ of certiorari, Burns instituted another action against respondents in the United States District Court for the District of Minnesota. The federal district court granted respondents' motion for summary judgment on the basis of the doctrine of res judicata since "the Minnesota Supreme Court has rendered final judgment on what is essentially this same cause of action." *Burns v. Decker*, Civil No. 3-74-246 (D. Minn., filed Jan. 3, 1975); set out in Petitioner's Appendix at b1. The Eighth Circuit Court of Appeals affirmed the district court decision. That court noted:

> A review of the pleadings in the state court and those in the federal district court reveals that Burns' federal action states the same basic contentions, including 42 U.S.C. § 1983 claims, as did the state action. Appellant is not entitled to raise those contentions for a second time in federal court. *Towle v. Boeing Airplane Co.*, 364 F.2d 590 (8th Cir. 1966). We are satisfied that all issues raised in this case have been previously decided by the state court.

Burns v. Decker, No. 75-1150 (8th Cir., filed July 17, 1975); set out in Petitioner's Appendix at a1.

Petitioner now files a Petition for a Writ of Certiorari in an attempt to have this Court review the decision of the Eighth Circuit.

ARGUMENT

I. Res Judicata

A comparison of Burns' pleadings in the state courts and those in the federal courts reveals that his federal action states the same basic contentions, including the constitutional and 42 U.S.C. § 1983 (1974) claims as did his state action. Thus, as the court below correctly held, petitioner's federal action is barred by the doctrine of res judicata. *Towle v. Boeing Airplane Co.*, 364 F.2d 590 (8th Cir. 1966). All of petitioner's contentions have been resolved by the Minnesota courts. *See Burns v. Decker*, Civil No. 23281 (Minn. Dist. Ct., 9th Dist., entered November 30, 1972); set out in Petitioner's Appendix at d1, *aff'd* 298 Minn. 7, 212 N.W.2d 886 (1973). Res judicata applies in federal actions to issues previously decided by a state court in actions brought pursuant to 42 U.S.C. § 1983 (1974). *Goodrich v. Supreme Court of State of South Dakota*, 511 F.2d 316 (8th Cir. 1975). Similarly, res judicata applies to constitutional issues previously decided by a State court. *Lombard v. Board of Education of City School District of New York*, 502 F.2d 631 (2nd Cir. 1974), *cert. denied* 420 U.S. 976 (1975).

The cases cited by petitioner (Brief at 55) purporting to establish differences in the circuit courts in the application of the doctrine of res judicata in § 1983 actions are in actuality consistent with one another. A review of those decisions indicates that any differences are readily explained by different factual determinations by the courts on the question of wheth-

er the appellants had previously litigated their claims in state courts. The cases cited by petitioner do not support petitioner's request for certiorari because they consistently hold that a claimant may not raise in federal court an issue previously raised and decided in state court.

Based upon the foregoing, there appear to be no "special and important reasons" for granting this request for a writ of certiorari. *Rice v. Sioux City Cemetery*, 349 U.S. 70 (1955); U.S. Supreme Court Rule 19.

II. The Settlement Agreement

A review of petitioner's petition leads to the conclusion that he is attempting to reargue the merits of his case by representing to this Court that the questions presented for review concern the validity of the settlement agreement entered into between the parties. It is obvious upon a cursory reading of the pleadings and decisions of the state and federal courts herein that petitioner has settled his case and the settlement was not fraudulent. Consistent with longstanding Minnesota law, settlement of claims is highly desirable and settlements will be upheld. *Eggleston v. Keller Drug Co.*, 265 Minn. 78, 120 N.W.2d 305 (1963); *Gronquist v. Olson*, 242 Minn. 119, 64 N.W.2d 159 (1954); *Fidelity & Casualty Co. of New York v. Gillette-Herzog Mfg. Co.*, 92 Minn. 274, 99 N.W. 1123 (1904). Respondents assert that these decisions by the Minnesota Supreme Court interpreting Minnesota law and the facts upon which the state supreme court founded its decision in this case are controlling. *Scripto v. Carson*, 362 U.S. 207 (1960). In addition, we also note that settlements are highly favored in federal courts and will similarly be upheld. *See D. H. Obermyer Co. v. Loflin*, 440 F.2d 1213 (5th Cir.), *cert. denied* 404

U.S. 851 (1971). *See also Pfizer, Inc. v. Lord*, 456 F.2d 532 (8th Cir.), *cert. denied*, 406 U.S. 976 (1972).

CONCLUSION

For the reasons set forth above, respondents respectfully request the court to deny the petition for certiorari. Dated this 7th day of November, 1975.

Respectfully submitted,

WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD G. MARK
Assistant Solicitor General
160 State Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2961
Attorneys for Respondents